

Department of Public Health  
and Human Services

Section:  
CASE MANAGEMENT

SUPPLEMENTAL NUTRITION ASSISTANCE  
PROGRAM (SNAP)

Subject:  
Fair Hearing Procedure

**Supersedes:** FS 1506-3 (04/01/06)

**References:** 7 CFR 273.15, ARM 37.5.101 through 37.5.505

**GENERAL RULE**--The Department is responsible to assure the individual's right to due process and the right to a hearing as stated in Section SNAP 1506-1. Hearings are conducted by an impartial official of the Department who has not been directly involved in the initial determination of the action in question. To meet due process standards, the Department has adopted these procedures.

## HEARING SITE

All parties to the hearing congregate at one location (usually the local county Office of Public Assistance (OPA) responsible for the contested case). The hearing may be conducted:

1. By a telephone conference call with the Hearing Officer in the Helena Hearings Office; or,
2. In a face-to-face hearing, if the claimant/representative makes a request for one:
  - a. All parties to the hearing and the Hearing Officer are at the same location responsible for the contested case; and,
  - b. The Hearing Officer will conduct the hearing in person.

**NOTE:** Unless all parties agree to a different location, hearings are held in the OPA maintaining the claimant's case.

## GROUP HEARINGS

The Hearing Officer may respond to a series of individual requests for hearings by conducting a single group hearing. Such action is appropriate when:

1. The claimants involved agree to participate in a group rather than have an individual hearing;
2. The cases involve related issues of state and/or federal law, regulations or policies; and,

**NOTE:** These related issues must be the only ones to be heard.

3. The claimants/representatives involved are each allotted time to present their case.

## HEARING RECORD & TRANSCRIPTION

The hearing must be recorded and may have to be transcribed. The OPA is responsible for recording the proceedings and the transcription of the proceedings.

**NOTE:** Transcription is necessary only when a case is appealed to the Board of Public Assistance or upon a participant's request.

When a hearing is transcribed:

1. Text must be accurate. That is, neither words nor grammar can be changed from what was actually said;

**NOTE:** Words such as "uh" or "um" can be left out.

2. The last page must contain the statement: "I hereby certify that the above is a true and correct transcription of the Fair Hearing for (name of claimant). This transcript was prepared by (name of the typist preparing the transcript)";
3. Statement must be signed by transcriptionist; and,
4. All pages must be numbered.

## NOTICE TO CLAIMANT

The Hearing Officer will send timely notice to the claimant/authorized representative by certified return receipt mail of the time, date, and place of the hearing. The claimant may request an earlier date as stated in Section SNAP 1506-1.

## CLAIMANT'S RIGHTS & ROLE

The claimant and/or representative has the right to examine the contents of his/her case file at any reasonable time prior to the hearing as well as during the hearing.

**NOTE:** Counties will be required to provide copies of all exhibits they plan to enter into the record to the claimant and Fair Hearings Officer at least five days prior to the hearing.

**NOTE:** Upon request, make available without charge the specific materials, including the hearing rules necessary for a claimant or his/her representative to prepare for the administrative review and/or hearing.

The claimant/representative may not examine those portions of the case file which:

1. Are precluded by federal regulation;
2. Are precluded by directive of a medical professional; or,
3. Contain confidential information about someone other than the claimant.

The claimant/authorized representative may:

1. Present the case or have it presented by a legal counsel or other person;
2. Bring witnesses;
3. Advance arguments without undue interference;
4. Submit evidence to establish all pertinent facts and circumstances in the case at least five days prior to the hearing (evidence presented during a hearing must be considered even if it was not submitted five days prior to the hearing); and,
5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

## DEPARTMENT'S ROLE

The County Director/Designee must attend the hearing and present the case for the Department. All employees of the OPA who were involved in making the decision being appealed or who have information relevant to the issues in dispute must also attend the hearing. In addition, the DPHHS attorney, regional and/or central office policy specialist, or other authorized department representative may attend the hearing and present or participate in the case presentation.

When the issue in dispute is complex and/or appears to have legal ramifications, the County Director/Designee shall contact their Regional Policy Specialist and request assistance from the Department's Office of Legal Affairs. For example, issues related to funds placed in trusts or resource accessibility or if the claimant has indicated his/her legal counsel wishes to address state or federal law.

If the Fair Hearings Officer requests a legal brief, the County Director/Designee shall promptly contact the Office of Legal Affairs and request them to prepare the brief.

The Department's representative may:

1. Examine all materials the claimant intends to introduce at the Fair Hearing;
  2. Present its own evidence;
- NOTE:** Counties will be required to provide copies of all exhibits they plan to enter into the record to the claimant and Fair Hearings Officer at least five days prior to the hearing.
3. Bring witnesses to testify on the Department's behalf;
  4. Question or refute testimony of the claimant/authorized representative and his/her witnesses; and,
  5. Confront and cross-examine the claimant/authorized representative and his/her witnesses.

#### **MATERIALS PRESENTED**

The Department shall introduce only documents, records, papers and materials which were previously available for examination by the claimant/representative. Documents or records which the household will not otherwise have an opportunity to contest or challenge, shall not be introduced at the hearing or affect the hearing official's decision.

**Exception:** The Hearing Officer may request a document, etc., to be made part of the record during the hearing. The claimant is then given time to review such evidence generally during a brief recess of the hearing.

**NOTE:** Evidence of hearsay (e.g., letters from landlords, employers, neighbors, or family members when the letter writer is not present at the hearing) may or may not be allowed. Whenever possible, if an individual can attend the hearing, it is preferable. Affidavits are preferable to letters because the Hearing Officer will give more weight to an affidavit.

#### **HEARING OFFICER'S ROLE**

The Hearing Officer may require:

1. Witnesses;
2. A party to comply with reasonable and appropriate orders or requests not in conflict with the rules and necessary to assure the orderly conduct of prehearing and hearing procedures or to avoid unnecessary proceedings or expense;

3. Depositions upon oral examination, or written questions;
4. Written interrogatories; and,
5. Other materials as necessary for the hearing;

**NOTE:** For this purpose, the Hearing Officer may, upon request of any party to the hearing, issue subpoenas for witnesses or subpoenas duces tecum.

The Hearing Officer has the right to:

1. Disqualify himself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;
2. Direct the parties to appear and confer in a prehearing conference to consider definition and simplification of the issues or other matters to aid in the orderly and efficient conduct of the hearing;
3. Allow, for good cause shown, a third party to represent a claimant as an authorized representative in those instances where written authorization of the claimant is not obtainable;
4. Take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public; and,
5. Grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure.

The Hearing Officer will:

1. Administer required oaths or affirmations;
2. Consider all relevant issues;
3. Request, receive and make part of the record all evidence presented;
4. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing; and,
5. Render a decision in the name of the Department's Board of Public Assistance consisting of:
  - a. Findings of fact;

- b. Conclusions of law; and,
- c. A recommended order deciding the case based on the law after considering the evidence in the hearing record.

### ACTION ON DECISION

The Hearing Officer's decision will be made within 60 days from the date of the hearing request. The decision becomes final unless the Department or the claimant appeals the decision to the Board of Public Assistance within 15 days of the mailing of the Fair Hearing Decision (SNAP 1506-4).

**NOTE:** No action can be taken on the case until the 15 day limit for appeal has passed.

After the appeal period has passed, if the decision is:

- 1. Favorable to the claimant, the county must correct any under issuance of benefits within 10 days of receipt of the hearing decision; or,

**NOTE:** The county may take longer than 10 days if it elects to make the issuance correction in the next benefit month's issuance.

- 2. Favorable to the Department (action is upheld), the county must establish an over issuance/overpayment claim to recover benefits issued pending the decision, if appropriate, and/or impose the adverse action prior to the next benefit issuance if timely notice can be provided (SNAP 1504-1).

### PROCEDURE

Responsibility      ACTION

- |                  |  |
|------------------|--|
| Hearing Officer: | <ul style="list-style-type: none"> <li>1. Schedule a Fair Hearing after:               <ul style="list-style-type: none"> <li>a. The county has conducted an Administrative Review (SNAP 1506-2); and,</li> <li>b. The completed Form SRS-LS-007, "Administrative Review Report" indicates the issues were not resolved at the Administrative Review level and the claimant wishes to proceed to hearing.</li> </ul> </li> </ul> |
| County Office:   | <ul style="list-style-type: none"> <li>2. Arrange for a cassette recorder to record the hearing.</li> </ul>  |

Section: CASE MANAGEMENT

Subject: Fair Hearing Procedure

- Hearing Officer: 3. Initiate the proceedings by:
- a. Informing participants that the hearing is being recorded;
  - b. Introducing him/herself and giving location for the record;
  - c. Stating the case name and number;
  - d. Requesting each individual present to state their name, role in the hearing and location;
  - e. Observing any problems in voice transmission and arrange for a change in positioning of the microphone, if necessary;
  - f. Explaining the procedure, the right to speak and cross-exam, and the order of the proceedings; and,
  - g. Advising those present to speak clearly, one at a time, and to identify him/herself before speaking.
- County Office: 4. Begin recording the proceedings.
- Hearing Officer: 5. Administer the oath; each person acknowledges the oath by voice.
- County Office: 6. Explain:
- a. What the adverse action is;
  - b. Why the adverse action was taken;
  - c. Why, in their opinion, the Fair Hearing was requested; and,
7. Present information, documentation, witnesses, legal cites, and legal argument in support of the adverse action.
- Claimant/  
Representative: 8. Present all pertinent facts, circumstances, information, documentation and legal cites in support of his/her position.
- Hearing Officer: 9. Conclude the hearing and inform the claimant a decision will be made within the appropriate time lines; and,
10. Inform all parties, if the decision is not satisfactory, an appeal must be filed within 15 days of the mailing of the decision (SNAP 1506-4).

Section: CASE MANAGEMENT

Subject: Fair Hearing Procedure

County: 11. After the 15 day time limit for filing an appeal has elapsed, take appropriate action based on the decision made.

**NOTE:** If appealed to the Board of Public Assistance, no action is taken until the Board's order is rendered.

#### **CLAIMANT'S WITNESS'S EXPENSES**

The Hearing Officer may order the Department, or the local office where appropriate, to pay witness fees, mileage and other actual and necessary expenses of a witness subpoenaed at the claimant's request; if, in the judgment of the Hearing Officer, the witness's testimony is essential to the claimant's case.

The Hearing Officer may order, where relevant and useful, an independent medical assessment or professional evaluation from a source satisfactory to the claimant and the Department. The costs shall be paid by the Department, or where appropriate, the local office.

#### **HEARING RECORD**

If the Claimant or Department appeals the fair hearing decision to the Board of Public Assistance, a record of the hearing proceedings will be compiled for the Board to review. The hearing record is made up of:

The Hearing Officer's decision;

1. The verbatim transcript (if requested), or recording of testimony and exhibits; and,
2. All exhibits, papers, and requests filed in the proceeding.

The record is available to:

1. The claimant or representative at a place accessible to him/her at a reasonable time for inspection and copying.

**NOTE:** The place may be the OPA or other location acceptable to all parties.

2. To the public for inspection and copying.

**NOTE:** Client name, address and any other identifying information must be kept confidential.

The Office of Fair Hearings is responsible for preparing the record for the Board to review, EXCEPT the transcript. The Office of Public Assistance is responsible for preparing the transcript if the fair hearing board review is requested.



An attorney from the Office of Legal Affairs will represent the Department at the meeting of the Board of Public Assistance. It is not necessary for the County Director or anyone from the OPA to attend the Board's meeting unless they wish to do so.

The Board will enter a written order stating whether the fair hearing decision is upheld or reversed and will send copies of the order to the Claimant and the OPA. When the OPA receives the written order of the Board of Public Assistance, action should be taken as described in "Action on Decision", above.

MC

o O o